



9110-04-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

**[Docket No. USCG-2017-0868]**

**RIN 1625-AA09**

**Drawbridge Operation Regulation; Isthmus Slough, Coos Bay, OR**

**AGENCY: Coast Guard, DHS.**

**ACTION: Temporary final rule.**

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**SUMMARY:** The Coast Guard is temporarily modifying the operating schedule that governs the Oregon State secondary highway bridge (Isthmus Slough Bridge), across Isthmus Slough, mile 1.0, at Coos Bay, OR. To accommodate Oregon Department of Transportation's (ODOT) preservation, painting and replacement of the bridge equipment, ODOT will operate half the double bascule span (single leaf). Additionally, during the period of this work, the non-functioning leaf of the span's vertical clearance will be reduced.

**DATES:** This temporary final rule is effective from 6 a.m. on February 26, 2018 to 6 p.m. on July 31, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Type USCG-2017-0868 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Steven M. Fischer, Bridge Administrator, Thirteenth Coast Guard District Bridge Program Office, telephone 206-220-7282; e-mail d13-pf-d13bridges@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
ODOT	Oregon Department of Transportation
§	Section
U.S.C.	United States Code

**II. Background, Purpose and Legal Basis**

On October 24, 2017, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Isthmus Slough, Coos Bay, OR, in the Federal Register (82 FR 49153). We received no comments on this rule. ODOT owns and operates the double bascule Isthmus Slough Bridge, across Isthmus Slough, mile 1.0, at Coos Bay, OR. The operating regulation has been temporarily modified to accommodate ODOT's painting, preservation, and upgrading of the bridge electrical systems. Isthmus Slough provides no alternate routes to pass around the Isthmus Slough Bridge. To facilitate this event, ODOT will operate the double bascule bridge in single leaf mode (half of the span), and reduce the vertical clearance of the non-functioning leaf. Up to ten feet of containment will be installed under the non-functioning leaf only, and will reduce the vertical clearance to 18 feet. Vessels that do not require an opening may

transit under the bridge at any time. We approved a temporary deviation on August 4, 2017 (82 FR 36332), with the same change in bridge operations as this rule change. We have not received any reports of problems or complaints with the subject bridge operating under the temporary deviation.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. Isthmus Slough Bridge, across Isthmus Slough, mile 1.0, at Coos Bay, OR, is a double bascule drawbridge, and provides a vertical clearance of 28 feet in the closed-to-navigation position referenced to the vertical clearance above mean high water tide level. ODOT cannot complete scheduled maintenance and equipment upgrades unless the operating schedule for the subject bridge is changed.

We approved a temporary deviation for this event, but later learned 180 days will not be enough time to complete the work. This temporary rule change to 33 CFR 117.879 will allow ODOT time to complete their scheduled maintenance and equipment upgrades. This temporary rule suspends the current paragraph regarding the Isthmus Slough Bridge, and adds a temporary new paragraph which amends the operating schedule of the Isthmus Slough Bridge by authorizing one half of the draw to open on signal, and reduces the horizontal clearance and vertical clearance of the bridge. The temporary rule is necessary to accommodate painting, preservation, and upgrading of its electrical systems. One half of the double bascule bridge will have a containment system installed on the non-functioning half of the span, and therefore reduces the vertical clearance by

ten feet to 18 feet. The horizontal clearance with a full opening is 140 feet. In single leaf operation, the horizontal clearance is reduced to approximately 70 feet.

#### **IV. Discussion of Comments, Changes and the Temporary Final Rule**

We published a NPRM in October 2017 with a 30 day comment period, and did not receive any comments. We approved this temporary rule change to 33 CFR 117.879 to be in effect from 6 a.m. on February 26, 2018, through 6 p.m. on July 31, 2019. This temporary rule authorizes ODOT to operate the Isthmus Slough Bridge one half of the draw on signal if at least 24 hours notice is given to the bridge operator, and reduce the horizontal clearance and vertical clearance of the bridge.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

##### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements

of Executive Order 13771. This regulatory action determination is based on the ability for mariners to transit under the bridge because the Isthmus Slough Bridge can open half the draw allowing for the reasonable needs of navigation.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section VI.A above, this rule would not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction, and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the

relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We received no (0) comments in the NPRM for this section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble. We received no (0) comments in the NPRM for this section.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2-1, paragraph (32) (e), of the Instruction. A Record of Environmental Consideration and a Memorandum for the Record are not required for this rule.

### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters.

Protesters are asked to contact the person listed in the “For Further Information Contact” section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### **List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

#### **PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 0170.1.

§ 117.879 [Suspended]

2. Suspend § 117.879 effective 6 a.m. on February 26, 2018, through 6 p.m. on July 31, 2019.

3. Add temporary § 117.T879, effective 6 a.m. on February 26, 2018, through 6 p.m. on July 31, 2019, to read as follows:



§ 117.T879 Isthmus Slough.

The draw of the Oregon State secondary highway bridge, mile 1.0, at Coos Bay, shall operate in single leaf, and open half the draw on signal if at least 24 hours notice is given. The vertical clearance of the non-functioning leaf will be reduced up to ten feet.

David G. Throop,  
Rear Admiral, U.S. Coast Guard,  
Commander, Thirteenth Coast Guard District.

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